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July 21, 1999

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Magalie Salas, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
12th Street Lobby, Room TW-A325  
Washington, D.C. 20554

In the matter of the Pay Telephone Reclassification and  
Compensation Provisions of the Telecommunications Act  
of 1996, **CC Docket No. 96-128**

Dear Ms. Salas:

Please find enclosed for filing an original and four copies  
of the "Reply Comments of the RBOC/GTE Payphone Coalition on  
Inmate Payphone Service Proceeding" in the above-captioned  
proceeding.

Sincerely,

*Michael Kellogg*  
Michael K. Kellogg

Enclosures

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.**

**RECEIVED**

**JUL 21 1999**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Pay Telephone	)	
Reclassification and Compensation	)	CC Docket No. 96-128
Provisions of the	)	
Telecommunications Act of 1996	)	

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**REPLY COMMENTS OF THE  
RBOC/GTE PAYPHONE COALITION  
ON INMATE PAYPHONE SERVICE PROCEEDING**

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In response to the Commission's Public Notice, DA 99-841 (rel. May 6, 1999), the RBOC/GTE Payphone Coalition (the "Coalition") explained in its opening comments why there is no justification for the imposition of an extraordinary inmate payphone compensation element at the federal level. It is possible that state-imposed rate ceilings might prevent PSPs in some states from being "fairly compensated" for some of the calls made from inmate payphones in those states. If this is the case, the FCC may appropriately be called upon to preempt those state rate ceilings. Other than reaffirming its willingness to preempt in appropriate circumstances, however, the Commission should take no action on this issue at this time. All commenters other than the Inmate Calling Service Providers Coalition ("ICSPC") agree. And the ICSPC — which has presented no evidence that would justify an across-the-board, blanket surcharge on inmate calls — is simply engaged in special pleading.

As to the second issue raised in the Public Notice, concerning the possibility of subsidies or discrimination in favor of BOC PSPs, the Coalition explained that the Commission's rules are already clear: BOCs are subject to *Computer III* and *ONA* nonstructural safeguards. The

Commission has determined that these regulations will “ensure that BOCs do not discriminate or cross-subsidize in their provision of payphone service.” *First Report and Order*,<sup>1</sup> 11 FCC Rcd at 20640, ¶ 199; *see also id.* at 20641, ¶ 200 (describing safeguards). These safeguards apply to BOC provision of inmate payphone services just as they do to BOC provision of other payphone services. Pursuant to those regulations, all service offerings that the BOCs provide to their inmate payphone operations are available on non-discriminatory terms and conditions to independent payphone operations. No additional Commission rules are required. To the extent that any party believes that it is the victim of unfair discrimination at the hands of any carrier, it may bring a complaint before the appropriate regulatory body. *See, e.g.*, 47 U.S.C. § 208.

Notwithstanding the clarity of the existing rules, the ICSPC attempts to muddy the waters with a series of unsubstantiated, unjustified and generally confused claims.

*First*, the ICSPC claims that LECs improperly “commingle” PSP receivables and associated uncollectibles with other LEC receivables. “Because ICS bad debt is much higher than bad debt associated with other LEC receivables,” ICSPC complains, “most of the costs of ICS bad debt are borne by the BOCs’ regulated operations.” ICSPC Comments at 19.

This complaint — which has already been made by the ICSPC and rejected by the Commission staff in a number of contexts — fundamentally misconstrues the nature of the relationship between a LEC PSP and LEC operator services (“OS”). Many independent PSPs, using smart phones, provide their own OS. They buy intra- and inter-LATA carriage in bulk from existing carriers and then package that transport with their OS and sell it to payphone

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<sup>1</sup>Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 20541 (1996).

customers at a mark-up. They have no need to receive per-call compensation from the carriers on such calls; their profit is in the mark-up that they charge over the bulk transport cost.

BOC PSPs, of course, are restricted in the interLATA services they can provide in-region, pending section 271 relief. And for LECs generally, even on intraLATA calls, OS is a regulated service. LECs, unlike independent PSPs, have no choice but to provide OS as a regulated service. The ICSPC is taking these disabilities and claiming that they are a form of improper discrimination in favor of LEC PSPs. Nothing could be further from the truth.

On interLATA inmate calls from LEC payphones, the chosen IXC provides the OS, carries and charges for the call, and pays either a commission or per-call compensation to the LEC PSP. The IXC, who gets the revenue from the call, is obviously also responsible for any bad debt on the call. Uncollectibles are necessarily commingled with receivables; indeed, uncollectibles are simply a subset of receivables. No one claims that there is any discrimination involved in such arrangements. They are available to LEC PSPs and independent PSPs alike.

The same is true on intraLATA calls from LEC payphones. Generally, the LEC provides the OS, carries and charges for the call, and pays either a commission or per-call compensation to the LEC PSP. The LEC operator services provider (“OSP”), who gets the revenue from the call, is obviously also responsible for any bad debt on the call. Uncollectibles are necessarily commingled with receivables; again, uncollectibles are simply a subset of receivables. *See, e.g., Memorandum Opinion and Order, Local Exchange Carriers Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs*, Nos. AAD 97-9 *et al.*, ¶ 20 (rel. June 13, 1997) (“Because it is appropriate for ILECs to continue to treat inmate collect calling as a

regulated service, we reject the argument advanced by APCC and ICSPC that the uncollectibles associated with inmate collect calling must be included in nonregulated cost pools.”).

There cannot be any discrimination involved in such arrangements because they are available to LEC PSPs and independent PSPs alike. Independents could freely use LEC OS if they wanted. But they prefer to provide their own OS and rely, not on commissions or per-call compensation, but on their own mark-up over cost. That is fine. But that business choice cannot be said to create any discrimination or cross-subsidy between the regulated LEC OSP and the unregulated LEC PSP.

In those instances where LEC PSPs do provide their own OS on intraLATA calls, they too reap both the revenues and the uncollectibles, just as an independent PSP does. Even if the PSP uses a LEC for billing purposes,<sup>2</sup> any uncollectibles are charged back to the PSP. They are not borne by the regulated LEC.

Finally, it is worth noting that this issue is not unique to inmate payphones or even to payphones generally. If a LEC provides the OS on a call, it gets the revenue from that call, and uncollectibles necessarily follow (and reduce) revenue. LECs would be happy to have their OS deregulated, but the Commission staff has expressly stated that LEC OS remains regulated. *See, e.g., id.* (“In the payphone proceeding, the Commission focused upon the deregulation of local coin payphone rates, but did not initiate action to deregulate non-coin payphone calls. . . . [Accordingly,] it is appropriate for ILECs to continue to treat inmate collect calling as a

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<sup>2</sup>Some LEC PSPs in these circumstances do not even use the LEC for billing purposes, but instead use a third-party clearing house.

regulated service . . . .”) (internal citation omitted). In the meantime, LEC OS is available to all PSPs, affiliated and independent alike, on the same terms and conditions.

*Second*, ICSPC claims that BOCs “discriminat[e] in favor of their ICS in the provision of fraud control information.” ICSPC Comments at 20. Once again, this claim is based, in the first instance, on a misconception. The purpose of fraud control information is to minimize uncollectibles. Fraud is perpetrated on the carrier of a call — the one who obtains the revenue from the call — not on a PSP who is entitled to receive per-call compensation from the carrier (regardless whether the carrier itself is able to collect on the call or not). Accordingly, the party that obtains the revenue from the call (and bears the risk of it being uncollectible) has a strong interest in obtaining accurate fraud control information. That is true whether the party is an IXC, a LEC OSP, or a PSP with its own OS operations.

In keeping with this interest, LEC OSPs cooperate with other carriers in trying to minimize fraud. This is part of their regulated operations, and it helps them minimize non-payment on all collect calls, not just collect calls from payphones. The LECs bear the expense of creating and maintaining fraud control centers because they also reap the benefit of lower uncollectibles. Just as uncollectibles necessarily follow receivables, so too does fraud control follow, and attempt to minimize, the former and maximize the latter. Since the OS revenues are regulated, the fraud control expenses must be part of regulated operations as well.

The ICSPC also complains about LIDB validation on calls from payphones. But LIDB is available to all PSPs, whether independent or affiliated, on exactly the same tariffed terms and conditions. Thus, to the extent that LEC PSPs provide their own OS, they can and do access LIDB on the same terms and at the same tariffed rates available to independent PSPs. There is

no discrimination.<sup>3</sup> Again, moreover, we should stress that this is not an issue peculiar to inmate payphones. It is true for all payphones and, indeed, for all collect calls.

*Third*, ICSPC complains that independents have no way of knowing when a particular number receiving a collect call has been changed to a CLEC. According to ICSPC, this means that an independent has no way of billing the call to the appropriate carrier. BOCs, on the other hand, can do this through their “exchange carrier settlement process.” ICSPC Comments at 28-29.

Yet again, this is a general issue that is not peculiar to payphones, much less to inmate payphones. The simple fact is that OSPs who provide collect calls must have in place a framework of agreements to collect on those calls from the local service provider for the called party, and that includes agreements with CLECs. LEC OSPs have such agreements in place; so, too, do IXC. And there are independent billing clearing houses that have such agreements.

Independent PSPs who chose to use LECs for OS benefit from those arrangements. Others, however, choose to compete against LEC OS. That is fine, but it means that they also have to make their own arrangements (or go through a third party) for collection. The same is true for LEC PSPs. If LEC PSPs use the LECs for OS, then the LEC OSPs have to worry about collections. If LEC PSPs provide their own OS, then they have to worry about collections. Ameritech’s PSP, for example, uses a third-party clearinghouse when calls terminate through a

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<sup>3</sup>ICSPC complains that LIDB dips are too expensive. ICSPC Comments at 27. But that is not a discrimination issue. LEC PSPs pay the same tariffed rates as independents. If ICSPC has objections to particular tariffs, it can register those objections in appropriate tariff proceedings. Such objections can form no basis for the inmate-payphone-specific discrimination and cross-subsidy claims being pressed here.

CLEC. That same, arm's-length arrangement is available to independent PSPs and to all other OSPs.

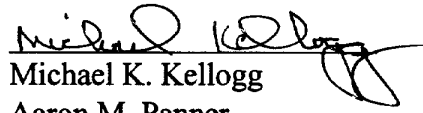
*Finally*, ICSPC argues that BOC inmate operations should be required to purchase network functions on a tariffed, arm's-length basis, on the same terms and conditions as independents. The short answer is: they are and they do. Any network service available to a BOC PSP is available on the same tariffed terms and conditions to an independent PSP. Indeed, pursuant to the BOCs' CEI plans, independents can even request additional network services that are not currently available. To our knowledge, however, none has done so. In the absence of any concrete claims of discrimination in the provision of network services — and ICSPC, while free with its accusation, is quite sparing when it comes to specifics — this claim too must be dismissed.

## **CONCLUSION**

For the foregoing reasons and the reasons stated in our opening Comments, the Commission should reaffirm: 1) that the Commission, after an appropriate, state-specific proceeding, will preempt a state rate ceiling upon a showing that the ceiling deprives inmate payphone providers of fair compensation for calls made from their payphones; and 2) that BOCs must provide non-discriminatory service to affiliated and independent inmate service providers alike. No further action is required in this proceeding.



Respectfully submitted,



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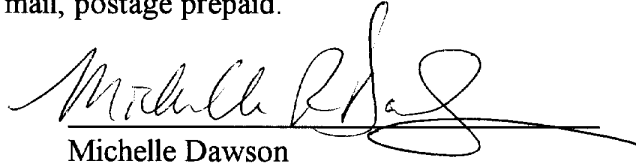
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*Counsel for the RBOC/GTE  
Payphone Coalition*

July 21, 1999

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 21st day of July 1999, I caused one copy of the foregoing "Reply Comments of the RBOC/GTE Payphone Coalition on Inmate Payphone Service Proceeding" of Ameritech, Bell Atlantic Corporation, BellSouth Corporation, GTE Service Corporation, SBC Communications Inc., and U S WEST, Inc. to be served upon the parties listed on the attached service list by first-class mail, postage prepaid.

  
Michelle Dawson

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